

REMARKS

Applicants have carefully reviewed the Office Action mailed May 9, 2006, prior to preparing this response. Currently claims 1-27 are pending in the application, wherein claims 23-27 have been rejected and claims 1-22 have been withdrawn from consideration consequent an Examiner induced restriction requirement. Favorable consideration of the following remarks is respectfully requested.

Claims 23, 24, 26 and 27 stand rejected under 35 U.S.C. §102(e) as being anticipated by Eder et al., U.S. Patent No. 6,585,753. Claims 23, 24, 26 and 27 stand rejected under 35 U.S.C. §102(b) as being anticipated by Sagae et al., U.S. Reissue Patent No. 36,628, or McNamara et al., U.S. Patent No. 6,254,550. Claims 23, 24, 26 and 27 stand rejected under 35 U.S.C. §102(e) as being anticipated by Davis et al., U.S. Patent Publication No., 2004/0111044. Claims 23 and 24 stand rejected under 35 U.S.C. §102(b) as being anticipated by Sachdeva et al., U.S. Patent No. 5,683,245. Claims 23, 24, 25 and 26 stand rejected under 35 U.S.C. §102(b) as being anticipated by Kleshinski, U.S. Patent No. 5,776,162. Claims 23-26 stand rejected under 35 U.S.C. §102(b) as being anticipated by DiCarlo et al., U.S. Patent No. 6,540,849. Claims 23 and 27 stand rejected under 35 U.S.C. §102(b) as being anticipated by Kaisha, EP 0395098. Claim 27 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Sachdeva et al., U.S. Patent No. 5,683,245, Kleshinski, U.S. Patent No. 5,776,162, or DiCarlo et al., U.S. Patent No. 6,540,849. Claims 24 and 26 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kaisha, EP 0395098. Applicants respectfully traverse these rejections.

After carefully reviewing each of the cited references, Applicants respectfully maintain that none of the cited references appear to teach the claimed invention, individually or in combination. Claim 23 recites in its entirety:

23. (original) A medical device, comprising:

a linear elastic member having at least one localized area of flexibility formed by selectively heating at least a portion of the member to a temperature sufficient to induce superelasticity in the member.

In responding to the Applicants' previous remarks, the Examiner stated "[p]age 6 of the present specification indicates that one suitable linear elastic material for use in the present invention is a nickel-titanium alloy, and this appears to be the preferred material of the prior art references." Office Action, May 9, 2006, page 5. Applicants respectfully disagree with the Examiner's statement. Applicants tend to agree that a preferred material of each of the references seems to be a nickel-titanium alloy. However, Applicants note that in each of the references, the nickel-titanium alloy is characterized as "superelastic", "shape memory" or "nitinol", indicative of the fact that the nickel-titanium alloy has been manufactured to possess a microstructure conducive of superelastic or shape memory properties, dissimilar to that of a linear elastic alloy.

The device currently claimed in claim 23 includes a linear elastic member having a localized area possessing superelastic properties, while adjacent areas of the member retain linear elastic properties. Applicants maintain that the cited references do not seem to teach the claimed invention. Claim 23, as well as claims 24-27 which depend from claim 23, are believed to be in condition for allowance. Withdrawal of the rejections is respectfully requested.

Reexamination and reconsideration are respectfully requested. It is submitted that all pending claims are currently in condition for allowance. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at 612.677.9050.

Respectfully submitted,

DENNIS A. BOISMIER ET AL.

By their Attorney,

Date: July 5, 2006


Glenn M. Seager, Reg. No. 36,926
CROMPTON, SEAGER & TUFTE, LLC
1221 Nicollet Avenue, Suite 800
Minneapolis, Minnesota 55403-2420
Tel: (612) 677-9050